

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 06-AE-13834-PEM
)	
ANN TAYLOR GARRETT,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 70923,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

On August 22, 2006, the Presiding Arbitrator of the State Bar’s Mandatory Fee Arbitration Program, Arne Werchick (Presiding Arbitrator), and his designee, its Director and Special Deputy Trial Counsel, Jill A. Sperber, filed a motion seeking the involuntary enrollment of Award Debtor **Ann Taylor Garrett**, under Business and Professions Code section 6203, subdivision (d)¹ due to her failure to pay a fee arbitration award. The motion was properly served on August 22, 2006, at Award Debtor’s official membership records address, by certified mail, return receipt requested, and by regular mail. (Bus. & Prof. Code, §6002.1, subd. (c); Rules Proc. of State Bar, rule 701(b).²)

Award Debtor did not file a response to the motion or request a hearing. (Rules 702(a) and (b) and 704.)

The court ordered that the matter be submitted for decision without a hearing on September 13, 2006.

¹References to “section” are to the provisions of the Business and Professions Code unless otherwise stated.

²References to “rule” are to the Rules of Procedure of the State Bar, unless otherwise noted.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on December 22, 1976, and has been a member of the State Bar at all times since.

B. Facts

On November 15, 2005, the Sacramento County Bar Association served a nonbinding fee arbitration award in *Kanavy v. Garrett*, directing Award Debtor to refund to her former client, Earlene Kanavy (Kanavy), aka Early Kanavy, \$4,200 forthwith.

The award became binding and final by operation of law on December 15, 2005, when the time for the Award Debtor to move for trial after arbitration pursuant to section 6203, subdivision (b) expired.

On December 29, 2005, Kanavy sent a letter to Award Debtor demanding payment of the award. However, Award Debtor did not reply to the letter or pay any portion of the award to Kanavy.

On January 13, 2006, the Office of Mandatory Fee Arbitration (State Bar) received Kanavy's request for enforcement of the arbitration award pursuant to section 6203, subdivision (d)(5). On February 27, 2006, the State Bar served the enforcement request on Award Debtor by certified mail and regular mail at her official membership records address, along with a letter notifying her of the potential consequences for failing to comply with the award or to respond to the enforcement request by March 29, 2006. The certified mailing was returned by the United States Postal Service as unclaimed. The letter and other enclosures sent by regular mail were not returned as undeliverable. Award Debtor did not respond to the enforcement request.

By letter dated April 7, 2006, the State Bar confirmed Award Debtor's failure to reply and advised her that the matter was being forwarded to the Presiding Arbitrator for issuance of an order imposing administrative penalties in the amount of \$1,000 under section 6203, subdivision (d). Award Debtor did not respond to the letter.

On May 2, 2006, the Presiding Arbitrator served an order imposing administrative penalties against Award Debtor in the amount of \$1,000 for her failure to comply with the award or respond

to the enforcement request within the required time period. The order stayed imposition of the penalty for 14 days to allow Award Debtor a final opportunity to comply with the award. Copies of the order were served on Award Debtor at her official membership records address by certified mail and regular mail. The certified mailing was returned unclaimed, but the regular mail was not returned. Since Award Debtor did not respond, the penalty of \$1,000 was imposed and added to her State Bar membership dues for the 2007 calendar year.

To date, Award Debtor has not paid any portion of the arbitration award and has not responded to the client's enforcement request.

C. Legal Conclusions

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that Award Debtor has failed to comply with the arbitration award and has not proposed a payment plan acceptable to the client or to the State Bar. (Section 6203, subd. (d)(2)(A); rule 705(a).)

The court also finds that Award Debtor has not met the burden of demonstrating by clear and convincing evidence that she is not personally responsible for making or ensuring payment of the award; that she is unable to pay it; or that she has proposed and agrees to comply with a payment plan which the State Bar has unreasonably rejected as unsatisfactory. (Section 6203, subd. (d)(2)(B); rule 705(b).)

III. Order of Involuntary Inactive Enrollment

Accordingly, IT IS HEREBY ORDERED that the State Bar's motion for involuntary inactive enrollment is **GRANTED** and that Award Debtor **Ann Taylor Garrett** be enrolled as an inactive member of the State Bar of California pursuant to section 6203, subdivision (d)(1), effective five days from the date of service of this order. (Rule 708(b)(1).)

IT IS FURTHER ORDERED that Award Debtor must remain involuntarily enrolled as an inactive member of the State Bar until:

- (1) she has paid the arbitration award to Earlene (Early) Kanavy in the amount of \$4,200 plus interest at the rate of 10% per annum from November 15, 2005, the date of

service of the award;³

- (2) she has paid the administrative penalty of \$1,000, assessed by the Presiding Arbitrator's order filed on May 2, 2006; and
- (3) the court grants a motion to terminate her inactive enrollment pursuant to rule 710.

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission of a bill of costs. (Section 6203, subd.(d)(3); rule 708(b)(2).)

Dated: October ____, 2006

PAT McELROY
Judge of the State Bar Court

³Earlene (Early) Kanavy is entitled to receive interest from the date of the underlying arbitration award in this matter. (See *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 26-27; *Britz, Inc. v. Alfa-Laval Food & Dairy Co.* (1995) 34 Cal.App.4th 1085, 1106-1107; Civ. Code, §3287.)